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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,247	12/01/2003	Alan C. Colliander	54902-0015	1246
29052	7590	02/10/2005	EXAMINER	
SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309			FERGUSON, MICHAEL P	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/707,247

Applicant(s)

COLLIANDER, ALAN C.

Examiner

Michael P. Ferguson

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5-9,11-20 and 26 is/are pending in the application.
- 4a) Of the above claim(s) 11,13 and 16-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-9,12,14,15,20 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 12/13/04.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claim 9 is objected to because of the following informalities:

Claim 9 (line 1) recites "of claim 8". It should recite --of claim 6--.

For the purpose of examining the application, it is assumed that appropriate correction has been made.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding claim 26, the word "means" is preceded by the word(s) "harpoon" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

### *Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3679

6. Claims 1, 2, 5-9, 12, 14, 15, 20 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Abbott et al. (US 4,950,098).

As to claim 1, Abbott et al. disclose a fence slat **96** comprising:

a longitudinal body;

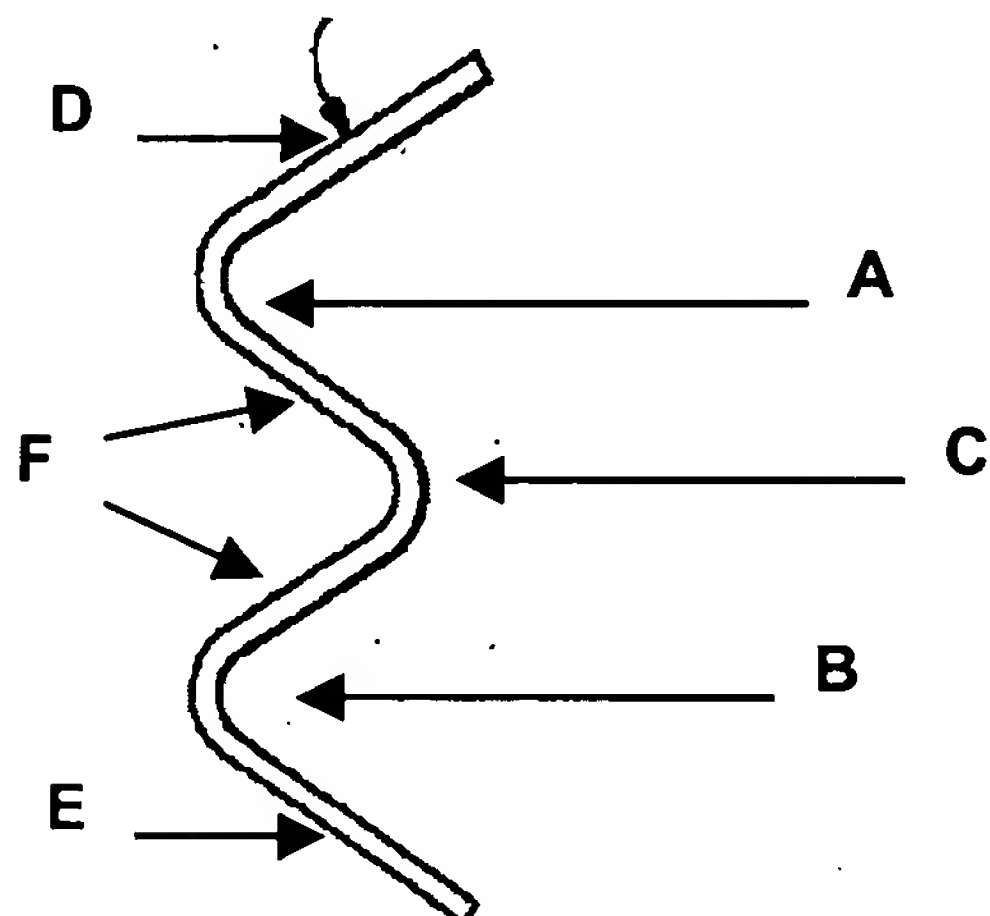
the longitudinal body comprising a first side **A** and a second side **B**;

a first sidewall **A** (Figure 13 reprinted below with annotations) positioned on the first side of the longitudinal body; and

a second sidewall **B** positioned on the second side of the longitudinal body; and

a rib **C** positioned between the first side wall and the second side wall;

the first and the second sidewalls and the rib each comprising a harpoon-shaped (harpoon-shape being defined by elevated portion **93** being bent to an elevated position when the longitudinal body is inserted; Figure 9) locking portion **94** positioned thereon (Figures 7-10 and 13).



Art Unit: 3679

As to claim 2, Abbott et al. disclose a fence slat **96** wherein the first side wall **A** comprises a first curved sidewall and wherein the second sidewall **B** comprises a second curved sidewall (Figure 13).

As to claim 5, Abbott et al. disclose a fence slat **96** wherein the longitudinal body comprises a tube (tube defined by cylindrical opening **94** when longitudinal body is inserted; Figure 9).

As to claim 6, Abbott et al. disclose a fence slat **96** wherein the tube comprises a substantially flat first side **D** and a substantially flat second side **E** (Figure 13).

As to claim 7, Abbott et al. disclose a fence slat **96** wherein the tube comprises the rib **C** separating the substantially flat first side **D** and the substantially flat second side **E** (Figure 13).

As to claim 8, Abbott et al. disclose a fence slat **96** wherein the tube comprises a first end and a second end and wherein the first end comprises the locking portion **94** (Figure 9).

As to claim 9, Abbott et al. disclose a fence slat **96** wherein the substantially flat first side **D** comprises a terminating point adjacent to the first end.

As to claim 12, Abbott et al. disclose a fence slat **96** wherein the locking portion **94** comprises a cutout portion **94** and an elevated portion **93** (cutout portion **94** comprising a cutout opening; elevated portion **93** being bent to an elevated position when the longitudinal body is inserted; Figure 9).

As to claim 14, Abbott et al. disclose a fence slat **96** comprising a second locking portion (not shown; at other end of longitudinal body).

Art Unit: 3679

As to claim 15, Abbott et al. disclose a fence slat **96** wherein the first **A** and the second **B** curved sidewalls comprise a curve towards the longitudinal body (Figure 13).

As to claim 20, Abbott et al. disclose a fence slat **96** comprising:

a longitudinal body;

the longitudinal body comprising a first wall **D** and a second wall **E**;

a pair of sidewalls **F** connecting the first wall and the second wall;

a rib **C** connecting the first wall and the second wall; and

the pair of sidewalls and the rib each comprising a harpoon-shaped (harpoon-shape being defined by elevated portion **93** being bent to an elevated position when the longitudinal body is inserted; Figure 9) locking portion **94** positioned thereon (Figures 7-10 and 13).

As to claim 26, Abbott et al. disclose a fence slat **96** comprising:

a longitudinal body;

the longitudinal body comprising a first wall **D** and a second wall **E**;

a pair of sidewalls **F** connecting the first wall and the second wall;

a rib **C** connecting the first wall and the second wall; and

the pair of sidewalls and the rib each comprising a harpoon means **94** (harpoon-shape being defined by elevated portion **93** being bent to an elevated position when the longitudinal body is inserted; Figure 9) for locking the longitudinal body positioned thereon (Figures 7-10 and 13).

***Response to Arguments***

7. Applicant's arguments filed January 21, 2005 have been fully considered but they are not persuasive.

As to claim 1, Attorney argues that:

Abbott et al. do not disclose a fence slot comprising a *harpoon-shaped* locking portion.

Examiner disagrees. As to claim 1, Abbott et al. disclose a fence slat **96** comprising a harpoon-shaped locking portion **94** (harpoon-shape being defined by elevated portion **93** being bent to an elevated position when the longitudinal body is inserted; Figure 9).

As to claim 12, Attorney argues that:

Abbott et al. do not disclose a fence slat wherein a locking portion comprises a *cutout portion and an elevated portion*.

Examiner disagrees. As to claim 12, Abbott et al. disclose a fence slat **96** wherein the locking portion **94** comprises a cutout portion **94** and an elevated portion **93** (cutout portion **94** comprising a cutout opening; elevated portion **93** being bent to an elevated position when the longitudinal body is inserted; Figure 9).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (703)308-8591. The examiner can normally be reached on M-F (7:30-4:30).

Art Unit: 3679

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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02/04/05



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